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SOCIAL SECURITY
ADMINISTRATION

96TH CONGRESS
2D SESSION

H. R. 7765

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8 (legislative day, JUNE 12), 1980

Read twice and referred to the Committee on the Budget

AN ACT

To provide for reconciliation pursuant to section 3 of the First
Concurrent Resolution on the Budget for the fiscal year
1981.

*Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,*

TITLE I—SHORT TITLE AND PURPOSE

SHORT TITLE

SECTION 101. That this Act may be cited as the "Om-
nibus Reconciliation Act of 1980".

PURPOSE

SEC. 102. The Congress declares that the purpose of
this Act is to implement the reconciliation provided for in the

1 SEC. 235. Section 428(f) of the Higher Education Act
 2 of 1965 is amended by adding at the end thereof the follow-
 3 ing new paragraph:

4 “(5) Notwithstanding any other provision of this subsec-
 5 tion no payment may be made under paragraph (1) or (2) of
 6 this subsection during the fiscal year beginning October 1,
 7 1980 and ending September 30, 1981.”

8 **TITLE III—HOUSE COMMITTEE ON**
 9 **INTERSTATE AND FOREIGN**
 10 **COMMERCE**

11 **Subtitle A—Savings Under the Medicare and**
 12 **Medicaid Programs**

13 **CHAPTER 1—PROVISIONS OF H.R. 4000**

14 **SHORT TITLE; TABLE OF CONTENTS**

15 SEC. 300. This chapter may be cited as the “Medicare
 16 and Medicaid Amendments of 1980”.

TABLE OF CONTENTS

Sec. 300. Short title; table of contents.

PART A—MEDICARE AND MEDICAID RELATED PROVISIONS

Sec. 301. In general.

[NOTE: The succeeding sections (302-328), which are listed in this table of contents as being included in part A of this chapter but the text of which is not actually set forth, are substantially identical to the sections included in chapter 2 of subtitle A of title VIII. The text of these sections appears in this Act as sections 842 through 868.]

Sec. 302. Expanded membership of professional standards review organizations.

Sec. 303. Registered nurse and dentist membership on statewide council advisory group.

Sec. 304. Nonphysician membership on national professional standards review council.

Sec. 305. Efficiency in delegated review.

Sec. 306. Required activities of professional standards review organizations.

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organizations.

- Sec. 307. Response of professional standards review organizations to Freedom of Information Act requests.
- Sec. 308. Consultation by professional standards review organizations with health care practitioners.
- Sec. 309. Review of routine hospital admission services and preoperative hospital stays by professional standards review organizations.
- Sec. 310. Study of professional standards review organizations norms, standards, and criteria.
- Sec. 311. Nonprofit hospital philanthropy.
- Sec. 312. Consultative services for skilled nursing facilities.
- Sec. 313. Study of need for dual participation of skilled nursing facilities.
- Sec. 314. Alternative to decertification of long-term care facilities out of compliance with conditions of participation; look behind authority.
- Sec. 315. Life safety code requirements.
- Sec. 316. Criminal standards for certain medicare- and medicaid-related crimes.
- Sec. 317. Exclusion of health care professionals convicted of medicare- or medicaid-related crimes.
- Sec. 318. Requirements concerning reporting of financial interest.
- Sec. 319. Withholding of Federal share of payments to medicaid providers to recover medicare overpayments.
- Sec. 320. Hospital providers of long-term care services ("swing-beds").
- Sec. 321. Coordinated audits under the Social Security Act.
- Sec. 322. Demonstration projects relating to the training of aid to families with dependent children recipients as home health aides.
- Sec. 323. Quality assurance programs for clinical laboratories.
- Sec. 324. Reimbursement of clinical laboratories under medicare and medicaid.
- Sec. 325. Reimbursement of physicians' services in teaching hospitals.
- Sec. 326. Demonstration projects for requiring second opinions for certain elective surgical procedures under medicare and medicaid; application of informed consent to certain demonstration projects.
- Sec. 327. Continued use of demonstration project reimbursement systems.
- Sec. 328. Reimbursement for health maintenance organizations.

PART B—MEDICAID ONLY RELATED PROVISIONS

- Sec. 331. Reimbursement under medicaid for services furnished by nurse-midwives.
- Sec. 332. Continuing medicaid eligibility for certain individuals by disregarding certain involuntary increases in income.
- Sec. 333. Limitation on medicaid eligibility for individuals who dispose of assets.
- Sec. 334. Adjustment of dollar limitation and elimination of special limitation on medicaid payments to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.
- Sec. 335. Extension of increased funding for long-term care facility inspectors under medicaid.
- Sec. 336. Extension of increased funding for State medicaid fraud control units.
- Sec. 337. Change in calendar quarter for which satisfactory utilization review must be shown to receive waiver of medicaid reduction.

"§205. Limitation of payment of compensation for service-connected disabilities or death and payment of dependency and indemnity compensation during confinement in a penal institution."

(1) The amendments made by subsections (a), (b), and (c) shall take effect on the first day of the first month beginning after the end of the sixty-day period beginning on the date of the enactment of this Act.

(2) The amendments made by subsection (d) shall apply only to payments for months beginning after September 30, 1980.

TITLE VIII—HOUSE COMMITTEE ON WAYS AND MEANS; EXPENDITURE REDUCTIONS

Subtitle A—Medicare and Medicaid Program

Savings

CHAPTER 1—H.R. 3990 PROVISIONS

SHORT TITLE; TABLE OF CONTENTS

SEC. 801. This chapter may be cited as the "Medicare Amendments of 1980".

TABLE OF CONTENTS

Sec. 801.	Short title; table of contents.
Sec. 802.	Home health services.
Sec. 803.	Reciprocal agreements for services furnished outside the United States.
Sec. 804.	Dentists' services.
Sec. 805.	Treatment of plantar warts.
Sec. 806.	Community mental health centers.
Sec. 807.	Comprehensive outpatient rehabilitation facility services.
Sec. 808.	Optometrists' services.
Sec. 809.	Antigens.
Sec. 810.	Payment where beneficiary not at fault.
Sec. 811.	Flexibility in application of standards to rural hospitals.
Sec. 812.	Certification and utilization review by podiatrists.
Sec. 813.	Physician treatment plan for speech pathology.
Sec. 814.	Payment for physicians' services where beneficiary has died.

- Sec. 815. Presumed coverage provisions.
- Sec. 816. Payment to providers of services.
- Sec. 817. Limit on premium increases due to late enrollment.
- Sec. 818. Reenrollment and open enrollment in part B.
- Sec. 819. Chiropractors' services.
- Sec. 820. Increase in outpatient mental health benefits under part B.
- Sec. 821. Limitation on payments to radiologists and pathologists.
- Sec. 822. Shortened part B termination period for certain individuals whose premiums medicaid has ceased to pay.
- Sec. 823. Outpatient physical therapy services.
- Sec. 824. Reimbursement for blood.
- Sec. 825. Medicare payment liability secondary in certain automobile insurance cases.
- Sec. 826. Hospital transfer requirement for skilled nursing facility coverage.
- Sec. 827. Outpatient surgery.
- Sec. 828. Technical renal disease amendments.
- Sec. 829. Preadmission diagnostic testing.
- Sec. 830. Studies and demonstration projects.
- Sec. 831. Provider reimbursement review board.
- Sec. 832. Access to books and records of subcontractors.
- Sec. 833. Medicare coverage of pneumococcal vaccine and its administration.

HOME HEALTH SERVICES

SEC. 802. (a) Section 1811 of the Social Security Act is amended by striking out "and related post-hospital services" and inserting in lieu thereof ", related post-hospital, and home health services".

(b) Section 1812(a)(3) of such Act is amended to read as follows:

"(3) home health services."

(c) Section 1812(d) of such Act is repealed.

(d) Section 1812(e) of such Act is amended—

(1) by striking out "(b), (c), and (d)" and inserting in lieu thereof "(b) and (c)"; and

(2) by striking out "post-hospital extended care services, and post-hospital home health services" and

(2) The first sentence of section 1833(b) of such Act is amended by inserting "(A)" in clause (2) after "expenses incurred", and by inserting before the comma at the end of such clause the following: ", or (B) for items and services described in section 1861(s)(10)".

(3) Subparagraph (A) of section 1861(aa)(1) of such Act is amended by inserting before the comma at the end the following: "and items and services described in section 1861(s)(10)".

(c) The amendments made by this section shall apply to services furnished on or after July 1, 1981.

CHAPTER 2—H.R. 4000 PROVISIONS

SHORT TITLE; TABLE OF CONTENTS

SEC. 841. This chapter may be cited as the "Medicare and Medicaid Amendments of 1980".

TABLE OF CONTENTS

Sec. 841.	Short title; table of contents.
Sec. 842.	Expanded membership of professional standards review organizations.
Sec. 843.	Registered nurse and dentist membership on statewide council advisory group.
Sec. 844.	Nonphysician membership on national professional standards review council.
Sec. 845.	Efficiency in delegated review.
Sec. 846.	Required activities of professional standards review organizations.
Sec. 847.	Response of professional standards review organizations to freedom of information act requests.
Sec. 848.	Consultation by professional standards review organizations with health care practitioners.
Sec. 849.	Review of routine hospital admission services and preoperative hospital stays by professional standards review organizations.
Sec. 850.	Study of professional standards review organizations norms, standards, and criteria.
Sec. 851.	Nonprofit hospital philanthropy.
Sec. 852.	Consultative services for skilled nursing facilities.
Sec. 853.	Study of need for dual participation of skilled nursing facilities.
Sec. 854.	Alternative to decertification of long-term care facilities out of compliance

with conditions of participation; look behind authority.

Sec. 855. Life safety code requirements.

Sec. 856. Criminal standards for certain medicare- and medicaid-related crimes.

Sec. 857. Exclusion of health care professionals convicted of medicare- or medicaid-related crimes.

Sec. 858. Requirements concerning reporting of financial interest.

Sec. 859. Withholding of federal share of payments to medicaid providers to recover medicare overpayments.

Sec. 860. Hospital providers of long-term care services ("swing-beds").

Sec. 861. Coordinated audits under the Social Security Act.

Sec. 862. Demonstration projects relating to the training of aid to families with dependent children recipients as home health aides.

Sec. 863. Quality assurance programs for clinical laboratories.

Sec. 864. Reimbursement of clinical laboratories under medicare and medicaid.

Sec. 865. Reimbursement of physicians' services in teaching hospitals.

Sec. 866. Demonstration projects for requiring second opinions for certain elective surgical procedures under medicare and medicaid; application of informed consent to certain demonstration projects.

Sec. 867. Continued use of demonstration project reimbursement systems.

Sec. 868. Reimbursement for health maintenance organizations.

1 EXPANDED MEMBERSHIP OF PROFESSIONAL STANDARDS

2 REVIEW ORGANIZATIONS

3 SEC. 842. Section 1152(b)(1)(A) of the Social Security

4 Act is amended—

5 (1) by inserting "and, if the organization so elects,
6 of other health care practitioners engaged in the prac-
7 tice of their professions in such area who hold inde-
8 pendent hospital admitting privileges," after the
9 comma in clause (ii); and

10 (2) by inserting "(except as otherwise provided
11 under section 1155(c))" after "does not" in clause (vi).

12 REGISTERED NURSE AND DENTIST MEMBERSHIP ON

13 STATEWIDE COUNCIL ADVISORY GROUP

14 SEC. 843. (a) Section 1162(e)(1) of the Social Security

15 Act is amended by inserting "(including at least one regis-

1 “(e) The Secretary shall restore to the trust funds estab-
 2 lished under sections 1817 and 1841, as appropriate,
 3 amounts recovered under this section as setoffs against over-
 4 payments under title XVIII.

5 “(f) Notwithstanding any other provision of this title, an
 6 institution or person shall not be entitled to recover from any
 7 State any amount in payment for medical care and services
 8 under this title which is withheld by the State agency pursu-
 9 ant to an order by the Secretary under subsection (b).”.

10 HOSPITAL PROVIDERS OF LONG-TERM CARE SERVICES

11 (“SWINGBEDS”)

12 SEC. 860. (a)(1) Title XVIII of the Social Security Act
 13 is amended by adding after section 1882 the following new
 14 section:

15 “HOSPITAL PROVIDERS OF EXTENDED CARE SERVICES

16 “SEC. 1883. (a)(1) Any hospital (other than a hospital
 17 which has in effect a waiver of the requirement imposed by
 18 section 1861(e)(5)) which has an agreement under section
 19 1866 may (subject to subsection (b)) enter into an agreement
 20 with the Secretary under which its inpatient hospital facilities
 21 may be used for the furnishing of services of the type which,
 22 if furnished by a skilled nursing facility, would constitute
 23 post-hospital extended care services.

24 “(2)(A) Notwithstanding any other provision of this title,
 25 payment to any hospital for services furnished under an

1 agreement entered into under this section shall be based upon
2 the reasonable cost of the services as determined under sub-
3 paragraph (B).

4 “(B)(i) The reasonable cost of the services consists of
5 the reasonable cost of routine services (determined under
6 clause (ii)) and the reasonable cost of ancillary services (de-
7 termined under clause (iii)).

8 “(ii) The reasonable cost of routine services furnished
9 during any calendar year by a hospital under an agreement
10 under this section is equal to the product of (I) the number of
11 patient days during the year for which the services were fur-
12 nished, and (II) the average reasonable cost per patient-day,
13 such average reasonable cost per patient-day being the aver-
14 age rate per patient-day paid for routine services during the
15 previous calendar year under title XIX to skilled nursing
16 facilities located in the State in which the hospital is located
17 and which have agreements entered into under section
18 1902(a)(28).

19 “(iii) The reasonable cost of ancillary services shall be
20 determined in the same manner as the reasonable cost of an-
21 cillary services provided for inpatient hospital services.

22 “(b) The Secretary may not enter into an agreement
23 under this section with any hospital unless the hospital has
24 been granted a certificate of need for the provision of long-
25 term care services from the State health planning and devel-

1 opment agency (designated under section 1521 of the Public
 2 Health Service Act) for the State in which the hospital is
 3 located.

4 “(c) An agreement with a hospital under this section
 5 shall, except as otherwise provided under regulations of the
 6 Secretary, be subject to termination on the same conditions
 7 as are agreements with skilled nursing facilities under section
 8 1866 (unless the hospital fails to satisfy the requirements
 9 specified in subsection (b)) and shall, where not inconsistent
 10 with any provision of this section, impose the same duties,
 11 responsibilities, conditions, and limitations, as those imposed
 12 under such agreements entered into under section 1866;
 13 except that no such agreement with any hospital shall be in
 14 effect for any period during which the hospital does not have
 15 in effect an agreement under section 1866, or where there is
 16 in effect for the hospital a waiver of the requirement imposed
 17 by section 1861(e)(5). A hospital whose agreement under this
 18 section has been terminated shall not be eligible to undertake
 19 a new agreement until a two-year period has elapsed from
 20 the termination date.

21 “(d) Any agreement with a hospital under this section
 22 shall provide that payment for services will be made only for
 23 services for which payment would be made as post-hospital
 24 extended care services if those services had been furnished by
 25 a skilled nursing facility under an agreement entered into

1 under section 1866; and any individual who is furnished serv-
2 ices, for which payment may be made under an agreement
3 under this section, shall, for purposes of this title (other than
4 this section), be deemed to have received post-hospital ex-
5 tended care services in like manner and to the same extent as
6 if the services furnished to him had been post-hospital ex-
7 tended care services furnished by a skilled nursing facility
8 under an agreement under section 1866.

9 “(e) During a period for which a hospital has in effect an
10 agreement under this section, in order to allocate routine
11 costs between hospital and long-term care services for pur-
12 poses of determining payment for inpatient hospital services,
13 the total reimbursement received for routine services from all
14 classes of long-term care patients (including title XVIII, title
15 XIX, and private pay patients) shall be subtracted from the
16 hospital's total routine costs before calculations are made to
17 determine title XVIII reimbursement for routine hospital
18 services.

19 “(f) A hospital which enters into an agreement with the
20 Secretary under this section shall be required to meet those
21 conditions applicable to skilled nursing facilities relating to
22 discharge planning and the social services function (and staff-
23 ing requirements to satisfy it) which are promulgated by the
24 Secretary under section 1861(j)(15). Services furnished by
25 such a hospital which would otherwise constitute post-hospi-

1 tal extended care services if furnished by a skilled nursing
 2 facility shall be subject to the same requirements applicable
 3 to such services when furnished by a skilled nursing facility
 4 except for those requirements the Secretary determines are
 5 inappropriate in the case of these services being furnished by
 6 a hospital under this section.

7 “(g) The Secretary shall prescribe by regulation an
 8 alternative method for determining the amount of the reason-
 9 able cost of post-hospital extended care services furnished in
 10 a distinct part of a hospital certified as a skilled nursing
 11 facility under section 1861(j) that is the same method as the
 12 method prescribed in subsections (a) and (e) for determining
 13 the amount of the reasonable cost for such services furnished
 14 by a hospital that uses beds interchangeably for either acute
 15 or long-term care and shall approve the use of this method
 16 when a hospital can demonstrate that its use would contrib-
 17 ute significantly to the more efficient or effective administra-
 18 tion of this part and would be in the interest of program
 19 beneficiaries.”.

20 (2) Section 1861(v)(1) of such Act is amended by adding
 21 after subparagraph (F) the following new subparagraph:

22 “(G) Where a hospital furnishes inpatient services that
 23 would otherwise constitute post-hospital extended care serv-
 24 ices if furnished by a skilled nursing facility on the basis of a
 25 determination made by a Professional Standards Review

1 Organization (or, in the absence of such a qualified organiza-
2 tion, by such organization or agency with review responsibili-
3 ty as is otherwise provided for under this title) that (i) post-
4 hospital extended care services are medically necessary; and
5 (ii) such services are not otherwise available (as determined
6 in accordance with criteria established by the Secretary) at
7 the time the determination is made that post-hospital ex-
8 tended care services rather than inpatient hospital services
9 are medically necessary (and for such period as the circum-
10 stances described in clauses (i) and (ii) continue to apply); and
11 where the Secretary finds that such hospital (I) has had,
12 during the immediately preceding calendar year, an average
13 daily occupancy rate of less than 80 percent, and (II) could
14 be granted a certificate of need for the provision of long-term
15 care services from the designated State health planning and
16 development agency for the State in which the hospital is
17 located, the reasonable cost of such services for such hospital
18 shall be computed as provided for in section 1883(a). Where
19 payment is made in accordance with the preceding sentence,
20 the individual who is furnished such services will be deemed
21 to have received post-hospital extended care services in like
22 manner and to the same extent as if the services furnished to
23 him had been post-hospital extended care services furnished
24 by a skilled nursing facility under an agreement under section
25 1866.".

1 (3) Within three years after the date of the enactment of
 2 this Act, the Secretary shall submit to the Congress a report
 3 evaluating the program established by the amendment made
 4 by paragraph (1) of this subsection and shall include in such
 5 report an analysis of—

6 (A) the extent and effect of the agreements under
 7 the program on availability and effective and economi-
 8 cal provision of long-term care services, and

9 (B) whether the program should be continued.

10 (b) Title XIX of such Act is amended by adding after
 11 section 1913 (added by section 859(d) of this Act) the follow-
 12 ing new section:

13 "HOSPITAL PROVIDERS OF SKILLED NURSING AND
 14 INTERMEDIATE CARE SERVICES

15 "SEC. 1914. (a) Notwithstanding any other provision of
 16 this title, payment may be made, in accordance with this sec-
 17 tion, under a State plan approved under this title for skilled
 18 nursing facility services and intermediate care facility serv-
 19 ices furnished by a hospital which has in effect an agreement
 20 under section 1884.

21 "(b)(1) Payment to any such hospital, for any skilled
 22 nursing or intermediate care facility services furnished, shall
 23 be at a rate equal to the average rate per patient-day paid for
 24 routine services during the previous calendar year under this
 25 title to skilled nursing and intermediate care facilities located

1 in the State in which the hospital is located. The reasonable
2 cost of ancillary services shall be determined in the same
3 manner as the reasonable cost of ancillary services provided
4 for inpatient hospital services.

5 “(2) With respect to any period for which a hospital has
6 an agreement under section 1883, in order to allocate routine
7 costs between hospital and long-term care services, the total
8 reimbursement for routine services received from all classes
9 of long-term care patients (including title XVIII, title XIX,
10 and private pay patients) shall be subtracted from the hospi-
11 tal total routine costs before calculations are made to deter-
12 mine title XIX reimbursement for routine hospital services.

13 “(c) The State plan may provide an alternative method
14 for determining the amount of payment for long-term care
15 services furnished in a distinct part of a hospital (where the
16 conditions described in section 1883(g) are met) that is the
17 same as the method prescribed in subsection (b) of this sec-
18 tion for determining the amount of payment for such services
19 furnished by a hospital that uses beds interchangeably for
20 either acute or long-term care.”.

21 (c) The amendments made by this section become effec-
22 tive on the date on which final regulations, promulgated by
23 the Secretary to implement the amendments, are first issued;
24 and those regulations shall be issued not later than the first

1 day of the sixth calendar month following the month in which
 2 this Act is enacted.

3 COORDINATED AUDITS UNDER THE SOCIAL SECURITY ACT

4 SEC. 861. (a) Title XI of the Social Security Act is
 5 amended by inserting after section 1128 (added by section
 6 857(a) of this Act) the following new section:

7 "COORDINATED AUDITS

8 "SEC. 1129. (a) If an entity provides services reimburs-
 9 able on a cost-related basis under title V or XIX, as well as
 10 services reimbursable on such a basis under title XVIII, the
 11 Secretary shall require, as a condition for payment to any
 12 State under title V or XIX with respect to administrative
 13 costs incurred in the performance of audits of the books,
 14 accounts, and records of that entity, that these audits be co-
 15 ordinated through common audit procedures with audits per-
 16 formed with respect to the entity for purposes of title XVIII.
 17 The Secretary shall specify by regulation such methods as he
 18 finds feasible and equitable for the apportionment of the cost
 19 of coordinated audits between the program established under
 20 title V or XIX and the program established under title
 21 XVIII. Where the Secretary finds that a State has declined
 22 to participate in such a common audit with respect to title V
 23 or XIX, he shall reduce the payments otherwise due such
 24 State under such title by an amount which he estimates to be
 25 in excess of the amount that would have been apportioned to

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